

8-19-94

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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE COMMISSIONER OF PATENTS AND TRADEMARKS

In re Estate of Mieczyslaw Mirowski : REQUEST FOR PATENT TERM
U.S. Patent No. 4,407,288 : EXTENSION UNDER 35 U.S.C. §156
: ORDER TO SHOW CAUSE

An application for extension of the term of U.S. Patent No. 4,407,288 purportedly under 35 USC § 156, was filed in the Patent and Trademark Office (PTO) on August 16, 1994. An extension is sought on the basis of a premarket approval application, approved by the Food and Drug Administration (FDA), of a medical device known as the CPI Ventak PRx AICD System. The application for patent term extension was filed by Peter Forrest, a registered patent attorney, on behalf of Cardiac Pacemakers, Inc., licensee of the '288 patent and holder of the regulatory approval granted by the FDA for the CPI Ventak PRx AICD System. The assignee of record is Mieczyslaw Mirowski.

The application does not appear to meet the statutory criteria for a complete application because it does not satisfy the requirements set forth in 35 USC § 156(a)(3). Under § 156(a)(3), the term of a patent shall be extended from the original expiration date of the patent if:

(3) an application for extension is submitted by the owner of record of the patent or its agent and in accordance with the requirements of paragraphs (1) through (4) of subsection (d); (emphasis added).

In the Transmittal Letter accompanying the application for patent term extension it is stated by Mr. Forrest that "written authority for me to act on behalf of the beneficial owner, the Estate of Mieczyslaw Mirowski (now deceased), assignee of record, has not yet been received from Anna Mirowski, Personal Representative of the Estate of Mieczyslaw Mirowski." Accordingly, it is not apparent that the application for patent term extension was filed by "the owner of record of the patent or its agent" as required by 35 USC § 156(a)(3).

ORDER

Applicant is hereby given ONE (1) MONTH from the date of this order to show cause why the PTO should not issue a decision denying the application for patent term extension on the ground that the application is improper because it was not submitted by the owner of record of the patent or its agent. The provisions of 37 CFR § 1.136(a) do not apply to the one month time period.

Applicant is further required to address the following questions:

1. What is the date of death of Mieczyslaw Mirowski?
2. Prior to or at the time of filing of the application for patent term extension had the heirs or personal representative of the Estate of Mieczyslaw Mirowski granted any agency authority to Peter Forrest or Cardiac Pacemakers, Inc. for the purpose of filing the application? If the answer to this question is yes, appropriate evidence should be submitted to substantiate this fact.

Any response should be directed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Attention: Charles E. Van Horn
Deputy Assistant Commissioner
for Patent Policy and Projects

C. E. Van Horn
Charles E. Van Horn
Deputy Assistant Commissioner
for Patent Policy and Projects

Date: 19 August 1994

Peter Forrest
Mail Stop A390
Cardiac Pacemakers, Inc.
4100 Hamline Avenue North
St. Paul, MN 55112-5798

cc: Ronald L. Wilson, Director
Health Assessment Policy Staff
Office of Health Affairs (HFY-20)
Food and Drug Administration
5600 Fishers Lane, Room 11-44
Rockville, MD 20857

Re: CPI Ventak PRx AICD System

FDA Docket No. _____